

REMARKS

Applicant has carefully studied the Office Action of April 11, 2005, and offers the following remarks to accompany the above amendments. Applicant appreciates the telephonic interview of June 17, 2005 with Examiner Harold. Where appropriate, comments from the interview are included below and serve as the Interview Summary required by the MPEP.

Applicant herein amends claims 5, 8, and 12 to recite that playing of the audio file occurs "independently of whether the telephony device for the incoming call is involved in an ongoing call". Support for this can be found in Figure 6 and the accompanying text on pages 12 and 13 of the specification as originally filed. No new matter is added. Specifically, the text on pages 12 and 13 of the specification make no differentiation between whether the called party is involved in a telephone call at the time that the present invention is executed. Therefore, since the specification does not differentiate happenings based on whether there is an ongoing call, the events described by the present invention occur independently of the call status of the telephony device associated with the incoming call.

Claim 2 was objected to because of an informality. Applicant has canceled claim 2, thereby mooting the objection.

Claims 1-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kredo. Applicant respectfully traverses. For the Patent Office to establish anticipation, the Patent Office must show where in the reference each and every element is located. Furthermore, the elements of the reference must be arranged as claimed. MPEP § 2131.

Applicant has amended the independent claims to recite that the ring tone differentiation occurs independently of the status of the telephony device for the incoming call. In contrast, Kredo teaches, at col. 3, line 42-col. 4, line 16, that the audio files are selected and passed based on the fact that the called party is engaged in a prior call 125 on line 120. Further confirmation of this can be found in each of Kredo's independent claims, which recite "while the subscriber is connected to a third party". As such, Kredo does not teach or suggest "independently of whether the telephony device for the incoming call is involved in an ongoing call", as recited in the amended claims.

Since Kredo does not teach the amended claim element, Kredo does not anticipate the claim. Furthermore, since Kredo is commonly owned with the current application, Kredo is not

available under 35 U.S.C. § 103/102(e). Applicant requests withdraw of the § 102(e) rejection of claims 1-25 at this time in light of the amendment.

During the telephonic interview, Applicant indicated that Kredo was commonly owned with the current application. The Examiner stated that in light of this common ownership, a rejection under Shaffer, U.S. Patent 5,999,599 would have been appropriate. The Examiner specifically pointed to the bottom of col. 2 to the top of col. 4 of Shaffer to support the rejection. While the inherent limitations of the telephonic interview precluded an element by element analysis, the Examiner did indicate that it would appear that the majority of the claims could be rejected in view of Shaffer. Applicant has carefully reviewed Shaffer and has canceled claims 1, 2, 10 and 19-25 in response thereto. Additionally, several claims have been amended to change their dependencies in light of the cancellation of these claims. Claim 12 is amended to include the subject matter of claim 14, and claim 14 is canceled as redundant. No new matter is added.

While the Examiner indicated that it appeared that the claims could have been rejected under Shaffer, Applicant traverses as to the remaining claims. Specifically, claim 5 recites that the indicia associating the telephone number with the audio file includes a location of the audio file. Shaffer does not teach this element. Rather Shaffer automatically sends the audio file to the called party. Thus, Shaffer does not send a location of the audio file to the called party as recited in the claim. Claim 8 recites a web browser. Shaffer does not disclose this element. Claim 12 recites a default ring signal. Shaffer does not disclose this element, rather Shaffer's callers record their customized announcements. There is no provision in Shaffer for a default ring signal.

If the Patent Office disagrees with Applicant's assessment of Shaffer, Applicant invites the Patent Office to identify with particularity where in Shaffer these elements are taught. In the absence of such an identification, the remaining claims define over Shaffer.

Applicant requests reconsideration of the rejections in light of the amendments and remarks presented herein. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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